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No.

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1986

ROBERT J. KONDRAT,
Petitioner,

vs.

JOSEPH E. O'NEILL, JOSEPH DONOFRIO and EDWARD A. COX,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Sixth Circuit

ROBERT J. KONDRAT, *Pro Se*
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QUESTIONS PRESENTED

1. Does the act of entrapment when used by judicial officers violate the Fourteenth Amendment, due process of law?

2. Does the act of entrapment apply only to a defense in criminal action, or is the act applicable also to civil causes of action?

3. Are judicial officers who engage in entrapment protected by immunity?

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No.

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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

The Petitioner Robert J. Kondrat respectfully prays that a Writ of Certiorari issue to review the Order of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 17, 1987.

OPINIONS BELOW

The Order of the Court of Appeals is unreported and appears in the Appendix hereto. The Judgment, Memorandum Opinion and Order rendered by the District Court for the Northern District of Ohio, Eastern Division, are also unreported and also appear in the Appendix hereto.

JURISDICTION

A Petition for Writ of Certiorari is sought of the Order of the United States Court of Appeals, Sixth Circuit entered February 17, 1987. This Court's jurisdiction to review the Order by Writ of Certiorari is Article III of the Constitution of the United States which created the Supreme Court of the United States as a constitutional court giving judicial power to all cases, in law and equity, that arise under the Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provision involved is the Fourteenth Amendment to the United States Constitution as follows:

Amendment XIV

Section I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On April 10, 1985, the Petitioner brought action in the United States District Court, Northern District of Ohio, Eastern Division, against the Respondents who are three

judicial officers of the Ohio State Appellate Court system, see App. p. A6. The complaint alleged entrapment of the Petitioner by the Respondents; and denial of due process, Fourteenth Amendment. The District Court terminated the action for lack of jurisdiction and failure to state a claim upon which relief can be granted, see App. p. A4.

Thereafter, the Petitioner filed an appeal to the United States Court of Appeals for the Sixth Circuit in which, among other things, he argued that he was not asking a federal court to review a state court judgment. The issues in the case were the constitutionality of the use of entrapment by judicial officers and whether this denied rights guaranteed by the Fourteenth Amendment of the U. S. Constitution. The Sixth Circuit Court of Appeals affirmed the District Court's judgment stating that a District Court cannot review a state court decision; that entrapment is not a civil cause of action; and that judges are absolutely immune. A copy of the Sixth Circuit Court's decision is contained in the Appendix, see App. p. A1.

REASONS FOR GRANTING THE WRIT

1. That the act of entrapment is not restricted to a defense in criminal action but is applicable to civil law as well.

William C. Burton's Legal Thesaurus defines "ENTRAP" as follows:

> "allure, bait, beckon, befool, beguile, bring unawares into danger, bring unawares into evil, catch, catch by artifice, deceive, decoy, draw as by a lure, draw by artful inducements, draw in, dupe, enmesh, ensnare, entangle, entice, fool, hold out allurements, hold out

for temptation, inveigle, lay a snare for, lay a trap for, lead astray, lead by inducement, lead into danger by artifice, lead into temptation, lead on, lure, lure into a compromising act, set a snare for, set a trap for, snare, take in, tempt, trap, trip up."

The Petitioner brought civil action in the state courts. The defendant in the state court action counterclaimed alleging that his reputation had been damaged because the Petitioner had not kept the pleadings privileged. Although the defendant in the state court action, and the Respondents had known for years, prior to the action, the Petitioner's practice of not keeping the pleadings privileged, the defendant in the state court action and the Respondents never challenged, questioned or objected to the Petitioner's practices. Instead of the Respondents stepping forward with an order for Petitioner to cease his practice, the Respondents maintained a conduct which was to deceive and set a trap, leading the Petitioner to an apprehension of a condition other and different from that which exists. The Respondents knew that the Petitioner was not an attorney, and knew that the Petitioner had been forced into representing himself.

The Petitioner relied upon the Respondents to make known the court procedures not acceptable. By accepting pleadings considered privileged, and remaining secret, the Respondents misrepresented their official duty, luring the Petitioner into a trap from which the Respondents could then render a decision which would be unfavorable to the Petitioner. The Court of Appeals' ruling that entrapment is not a civil cause of action is erroneous and not consistent with fairness and justice. If entrapment is to be restricted to only a defense to criminal action, then judicial bodies involved in civil litigation would be in the

position to deceive any pro se candidate in quest of justice, thus discouraging and shutting off access to the civil courts to anyone who is not represented.

2. That the use of entrapment in a civil cause of action is a deprival of due process, in violation of the Fourteenth Amendment to the United States Constitution.

The Respondents' deception is an abnormal course of law administration in the court system. Entrapment is not a part of those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. The right of the Petitioner to be informed that pleadings are privileged was not given by the Respondents. This was not an orderly proceeding wherein the Petitioner was notified that pleadings were privileged, where Petitioner had the opportunity to be heard and given the right to protect his rights before a court. The Respondents kept silent leading the Petitioner into believing that his actions were in accordance with the law, and then at the opportune time, the Respondents sprung the trap on the Petitioner affirming an award of damages, rendered without the benefit of a trial, and rendered in light of the fact that the defendant in the state court action admitted to the truth of the allegations. This is not due process of law.

3. That judicial immunity from civil liability arising out of the discharge of judicial functions cannot be provided to judicial officials who acted with premeditation.

From previous cases, the Respondents knew that Petitioner's pleadings were not privileged. At no time during this period was any notification given or order issued to

Petitioner that the pleadings were privileged. Thus, the Respondents' entrapment was started outside the framework of the case judged. Respondents cannot claim absolute immunity for an act initiated while not under the umbrella of judicial immunity. The fact that there have been judges who have been removed from office; some who are behind bars; and some who have made restitution for their wrongs, would tend to disprove the argument of absolute immunity from civil liability. No judge can be permitted to commit a wrong arising while not in the discharge of judicial functions, and then be allowed to run for the judicial immunity umbrella as the Respondents have done.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the Order of the Sixth Circuit.

Litigation is not an evil. Over the course of centuries, our society has settled upon civil litigation as a means of redressing grievances, resolving disputes, and vindicating rights when other means fail. That our citizens have access to their civil court is not an evil to be regretted; rather, it is an attribute of a system of justice in which we ought to take pride. This quotation is even more true today.

Respectfully submitted,

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Petitioner

APPENDIX

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed February 17, 1987)

MANDATE OF THE UNITED STATES COURT OF APPEALS

(Issued March 11, 1987)

No. 86-3263

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT J. KONDRAT,
Plaintiff-Appellant,

v.

JOSEPH E. O'NEILL; JOSEPH DONOFRIO; EDWARD A. COX,
Defendants-Appellees.

[NOT RECOMMENDED FOR FULL-TEXT PUBLICATION]

ORDER

BEFORE: MARTIN and NELSON, *Circuit Judges;* and CONTIE, *Senior Circuit Judge.*

Appellant appeals *pro se* from the district court's dismissal of his complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief

can be granted. The appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After an examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Appellant alleges that the district court erred in construing his complaint of entrapment by three Ohio court of appeals judges as a request to review a state court decision.

The district court properly construed the complaint and properly dismissed it. A district court cannot review a state court decision. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 (1983).

Entrapment is not a civil cause of action; entrapment is only a defense to a criminal action. *U.S. v. McLernon,* 746 F.2d 1098, 1109 (6th Cir. 1984). Furthermore, judges are absolutely immune to a suit for damages for actions committed within their jurisdiction. *Stump v. Sparkman,* 435 U.S. 349, 356-357 (1978).

Accordingly, the district court's judgment is affirmed pursuant to Rule 9(d)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

ISSUED AS MANDATE: March 11, 1987

JUDGMENT OF THE UNITED STATES DISTRICT COURT

(Filed March 17, 1986)

No. C 85-1070

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. KONDRAT,
Plaintiff,

v.

JOSEPH E. O'NEILL, *et al.*,
Defendants.

JUDGMENT

LAMBROS, *District Judge*

In accordance with the memorandum opinion and order of this date in the above-captioned case, defendants' motion to dismiss pursuant to Rule 12(b)(1) and (6) is hereby granted. This action is dismissed and terminated.

IT IS SO ORDERED.

/s/ THOMAS D. LAMBROS
United States District Judge

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT

(Filed March 17, 1986)

No. C 85-1070

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. KONDRAT,
Plaintiff,

v.

JOSEPH E. O'NEILL, *et al.*,
Defendants.

MEMORANDUM OPINION AND ORDER

LAMBROS, *District Judge*

This is a *pro se* complaint brought against three judges of the Ohio Court of Appeals to recover compensatory and punitive damages for an alleged "entrapment" of plaintiff through the Court's affirmation of a state trial court judgment rendered against plaintiff. Present for consideration is defendants' motion to dismiss pursuant to Rule 12(b)(1) and (6), Fed. R. Civ. P.

Pro se pleadings are to be liberally construed. *Estelle v. Gamble,* 429 U.S. 97, 106 (1976). Such liberal construction is necessary to compensate for the *pro se* litigant's lack of skill and experience in pleading.

In considering a 12(b)(1) or (6) motion, the Court must focus on whether the claimant is entitled to offer evidence to support the claims made in the complaint, rather than whether the plaintiff will ultimately prevail. *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). Plaintiff in the case at bar is in reality asking this Court to review a state court judgment. This is the province of the state court system and not a United States District Court even if the constitutionality of the state court's action is raised. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 467, 482 (1983). Hence, this Court must abstain from considering plaintiff's complaint.

Accordingly, defendants' motion to dismiss is granted and this action is dismissed for lack of jurisdiction over the subject matter as well for failure to state a claim upon which relief can be granted. Rule 12(b)(1) and (6), Fed. R. Civ. P.

This action is terminated.

IT IS SO ORDERED.

/s/ THOMAS D. LAMBROS
United States District Judge

COMPLAINT FILED IN THE UNITED STATES DISTRICT COURT

Case No. C 85-1070

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. KONDRAT,
Plaintiff,

VS.

JOSEPH E. O'NEILL, JOSEPH DONOFRIO, EDWARD A. COX,
Defendants.

COMPLAINT OF ENTRAPMENT BY JUDICIAL OFFICERS; AND COMPLAINT OF DENIAL OF DUE PROCESS, FOURTEENTH AMENDMENT

JURY TRIAL DEMANDED

COMPLAINT

The Defendants in the captioned case are three judicial officers of the Ohio Appellate Court. On April 1, 1985, the Defendants' Judgment Entry and Opinion in case no. 9-179 was filed in the clerk of court's office in Painesville, Ohio.

Case no. 9-179 was initiated in Court of Common Pleas of Lake County. The complaint asked that defendant Barry Byron, Law Director for the city of Willoughby

Hills, return all monies derived from his exposed scheme of fabricating criminal activity against Plaintiff, and others, resulting from the Recall of city officials in 1976.

Because Plaintiff had sent copies of the complaint to others, Byron counter-claimed alleging injury to his reputation. Without a hearing, trial or proof of injury, the court of Common Pleas made an award and rendered a decision in favor of Byron. Plaintiff appealed the decision to the Court of Appeals of Ohio, Eleventh District, citing the Fourteenth Amendment, due process of law.

On June 28, 1983, oral argument was heard by the Eleventh Appellate District court in Painesville, Ohio. The Plaintiff gave oral argument. The Defendant remained silent, neither denying Plaintiff's allegations nor giving argument. After twenty months, the Appellate Court returned a decision affirming the lower court's decision on judgment and damages.

On January 16, 1979, in a false arrest and malicious prosecution case, a notice of appeal was filed in which the last paragraph read as follows:

> "Due to the number of people who are interested, but appear to be uninformed about this case and others which have stemmed from the Recall, a copy of this notice and *all future briefs and data on all cases* will be sent to the news media so that it may be reported on, should the media wish to do so. In addition, the Appellant's files on any and all cases are open to the media interested in knowing and/or reporting on past events. Because of the Constitutional issues involved, the people are as much a part of these cases as the Appellant. Consequently, it is hoped that the people will be kept informed and not clouded in an air of secrecy." (emphasis added)

The foregoing paragraph appeared nearly thirty-nine months prior to Byron's counter-claim. Both Defendants and courts were aware of the copies being sent. At the time of appearance of the above paragraph no defendant challenged or objected to the paragraph. Byron was aware of what was going on. No court told the Plaintiff that he was forbidden to send copies. And, all knew that Plaintiff was no lawyer. Consequently, the defendants and courts accepted Plaintiff's action. Furthermore, there is no evidence to substantiate injury brought about by Plaintiff.

However, the Defendants in the captioned case ruled otherwise. Plaintiff alleges that the Defendants O'Neill, Donofrio and Cox perpetuated an entrapment of Plaintiff for the purpose of rescuing defendant Byron in case no. 9-179. Plaintiff alleges that the Appellate Court was aware of the copies being sent, accepted it, then waited for the proper time to entrap Plaintiff. Entrapment was the same tactic employed by Byron, and other officials, to fabricate criminal activity against Plaintiff, and others, in the Willoughby Hills Recall of 1976.

The use of entrapment by law enforcement agencies such as the F.B.I. in the apprehension of criminals can be condoned. The use of entrapment by public officials to fabricate criminal activity for the purpose of creating criminals is barbaric and cannot be excused. And, the use of entrapment by judicial officers to rescue and protect those public officials is traitorous and a betrayal to the honorable judiciary and to the American way of life. No jury in this land would permit such behavior by public officials or the judiciary.

As a result of the captioned Defendants' actions which continue to deprive Plaintiff due process of law and justice,

Plaintiff is injured and made to suffer emotional and bodily harm and great mental anguish; and compelled to expend money, time and expense related to the Defendants' actions. Plaintiff asks judgment against Defendants, each of them, jointly and severally, for compensatory damages in the amount of $25,000,000 (Twenty-Five Million), for punitive damages in the amount of $10,000,000 (Ten Million), attorneys fees and all costs.

Respectfully Submitted,

/s/ Robert J. Kondrat

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-1817

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ROBERT J. KONDRAT,

Petitioner,

v.

JOSEPH E. O'NEILL, JOSEPH DONOFRIO AND EDWARD A. COX, JUDGES OF THE OHIO COURT OF APPEALS, SEVENTH APPELLATE DISTRICT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does entrapment constitute a defense to a crime or a civil cause of action that may be asserted against a party?

2. Does judicial immunity apply to suits for damages against acts of judges committed within their jurisdiction?

LIST OF PARTIES

The parties to the proceedings below were the petitioner Robert J. Kondrat and the respondents Judges Joseph Donofrio, Edward A. Cox and Joseph E. O'Neill.

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NO. 86-1817

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JOSEPH E. O'NEILL, JOSEPH DONOFRIO AND EDWARD A. COX, JUDGES OF THE OHIO COURT OF APPEALS, SEVENTH APPELLATE DISTRICT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

The respondents, Judges Joseph E. O'Neill, Edward A. Cox, and Joseph Donofrio of the Ohio Court of Appeals, Seventh Appellate District, respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Sixth Circuit's opinion in this case as entered on February 17, 1987.

STATEMENT OF THE CASE

Petitioner has adequately set forth the history of the case now before this Court. Respondents have no corrections, changes, or additions.

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW CORRECTLY DETERMINED THAT ENTRAPMENT IS ONLY A DEFENSE TO A CRIMINAL ACTION.

The first two questions presented by petitioner inquire whether the act of entrapment violates the Fourteenth Amendment to the United States Constitution and whether entrapment is applicable as a defense in a criminal proceeding only. The Sixth Circuit correctly determined both questions when it held that entrapment is not a cause of action in a civil proceeding. Rather it is only a defense to a criminal action. (Pet. A1-A2.)

In so holding the Sixth Circuit reaffirmed its holding in the case of *United States v. McLernon,* 746 F.2d 1098 (6th Cir. 1984). In *McLernon,* the Sixth Circuit discussed entrapment at length and held the following to be a correct statement on the law of entrapment: "where a 'person has no previous intent or no previous purpose to violate the law, but is induced or persuaded by law enforcement agents to commit a crime or agents of a government, he is entitled to the *defense* of unlawful entrapment.'"(Emphasis added.) 746 F.2d at 1109 (quoting *United States v. Thompson,* 366 F.2d 167 (1966)).

Clearly, petitioner was not forced or deceived by respondents to commit a crime nor was he prosecuted for any crime relating to this case for which the defense of entrapment would be applicable. Petitioner contends that entrapment occurred when respondents failed to inform him that court pleadings should be privileged and not released to the news media and then entered judgment against him because he proceeded to so release the pleadings. These facts clearly do not constitute entrapment as defined in *McLernon, supra.*

Since the question of entrapment fails to present an important issue for this Court's review, the question of due process also fails to raise any important issues requiring this Court's attention. Although petitioner asserts he was denied due process because respondents entered judgment against him without informing him that his actions were not in accordance with law, he fails to cite any precedent or authority supporting his contention that this action or the alleged "entrapment" constitutes a denial of due process under the Fourteenth Amendment to the United States Constitution.

Petitioner's assertions would have been better addressed through the appropriate appellate process in the Supreme Court of Ohio. As the Sixth Circuit affirmed, petitioner is requesting this Court and other federal courts to review a state court's decision. This should not be done in this instance. *See District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S. Ct. 1303 (1983).

Since the decision of the Sixth Circuit is well-supported by precedent and petitioner failed to demonstrate any conflict with similar cases in other circuits, respondents submit that the petition for a writ of certiorari should be denied.

II. THE DECISION BELOW CORRECTLY DETERMINED THAT JUDICIAL IMMUNITY IS APPLICABLE TO SUITS FOR DAMAGES AGAINST ACTS OF JUDGES COMMITTED WITHIN THEIR JURISDICTION.

The third question presented by petitioner inquires whether judicial officers who engage in entrapment are protected by judicial immunity. The Sixth Circuit correctly held that judges are absolutely immune from suit for damages for actions taken within their jurisdiction. (Pet. A1-A2.)

In so holding, the Sixth Circuit followed this Court's ruling in *Stump v. Sparkman,* 435 U.S. 349, 98 S. Ct. 1099 (1978), holding that judicial acts, normally performed by a judge before parties dealing with that judge in his judicial capacity, are protected by judicial immunity. Petitioner claims, however, that the respondents engaged in the act of entrapment and therefore their conduct was outside the scope of judicial immunity. Petitioner's continued misinterpretation of the defense of entrapment is again reflected in his argument.

The facts clearly show that respondents affirmed the judgment of the trial court and upheld the decision against petitioner. This action is clearly a function

normally performed by appellate courts and is unquestionably within their jurisdiction. Therefore, judicial immunity is applicable to such action and prohibits petitioner from maintaining a suit for damages against these judicial officers.

Moreover, petitioner fails to cite any authority supporting his reasons in alleging that such actions are beyond the scope of the respondents' jurisdiction. His conclusory statements fail to raise any important question involving judicial immunity that would affect any persons other than himself, or that would require review by this Court.

Since the Sixth Circuit's decision is well-supported and correctly determined, and since petitioner failed to demonstrate any conflict with any other circuit on this question of law, respondents submit that the petition for a writ of certiorari should be denied.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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